IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

WILLIAM B. RAMSEY AND
FRANCES RAMSEY,

Plaintiffs,

v. NO. 1:00CV283-S-D

RANGER INSURANCE CO., et al.,

Defendants.

OPINION

This case was originally filed in the County Court of Lee County, Mississippi, against Ranger Insurance Company, a Texas corporation, Mississippi Managers, Inc. (MIM), a Mississippi corporation, and Robert W. Winstead, a Mississippi resident, alleging that defendants improperly denied their claim for water damage to their home under an insurance policy issued by Ranger. Plaintiffs seek $13,799.30 in actual damages plus an unspecified amount of punitive damages for defendants' denial of the claim without legitimate or arguable reason. At some point, plaintiffs made an *ore tenus* motion to the county court, which has jurisdiction for claims not exceeding $75,000.00, to transfer the case to the Circuit Court of Lee County, Mississippi. That motion was granted, the court finding that plaintiffs had "shown that the potential amount of damages may exceed the $75,000.00 jurisdictional limit of County Court." Ranger then removed this action, alleging fraudulent joinder of the two in-state defendants.

Presently before the court is the motion of plaintiffs to remand. They argue that MIM and Winstead, who, as the claims manager of MIM, adjusted plaintiffs' claim, were not fraudulently joined and that the jurisdictional amount is not met in this case. In response, defendants submit the affidavit

of Winstead with supporting documentation to show that the factual allegations of plaintiffs' complaint are " misleading and simply wrong" so that there is no possibility that plaintiffs could prove that MIM and Winstead acted with gross negligence, malice, or reckless disregard for plaintiffs' rights, which is the standard for imposing individual liability on adjusters in Mississippi. *See Bass v. California Life Insurance Co.*, 581 So.2d 1087, 1090 (Miss. 1991). Plaintiffs did not submit any countervailing evidence.

The law on the issue of fraudulent joinder is well established:

> The burden of persuasion placed upon those who cry "fraudulent joinder" is indeed a heavy one. In order to establish that an in-state defendant has been fraudulently joined, the removing party must show either that there is *no possibility* that the plaintiff would be able to establish a cause of action against the in-state defendant in state court; or that there has been outright fraud in the plaintiff's pleadings of jurisdictional facts.[1]

B., Inc. v. Miller Brewing Co., 663 F.2d 545, 549 (5th Cir. 1981). The Fifth Circuit has consistently held that claims of fraudulent joinder "should be resolved by a summary judgment-like procedure whenever possible." *Sid Richardson Carbon & Gasoline Co. v. Interenergy Resources, Ltd.*, 99 F.3d 746, 751 (5th Cir. 1996). That exercise entails the court's piercing the pleadings to examine affidavits and other evidentiary material and resolving all *disputed* issues of fact in favor of plaintiffs. *Badon v. RJR Nabisco Inc.*, 224 F.3d 382, 393 (5th Cir. 2000) (citation omitted). However, "[a]s with a summary judgment motion, in determining diversity the mere assertion of 'metaphysical doubt as to the material facts' is insufficient to create an issue if there is no basis for those facts." *Jernigan v. Ashland Oil Inc.*, 989 F.2d 812, 816 (5th Cir. 1993) (citation omitted). Therefore, as with a summary judgment motion, the court must

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[1]Defendants have made no allegations of fraud in plaintiff's pleading of jurisdictional facts. The parties agree that plaintiff, MIM, and Winstead are Mississippi citizens.

> "resolve factual controversies in favor of the nonmoving party, but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts. We do not, however, in the absence of any proof, assume that the nonmoving party could or would prove the necessary facts."

Badon, 224 F.3d at 393-94 (citation and emphasis omitted).

As noted previously, defendants in this case submitted the unrefuted affidavit of Winstead and copies of letters to plaintiffs and plaintiffs' counsel which show, in this court's view, that there is no possibility that plaintiffs could prevail against defendants in state court. Of note are the following:

> (1) Plaintiffs' claim was never denied. Rather, the estimates for repairs from plaintiffs' contractor (apparently their daughter-in-law) and defendants' contractor widely diverged, and on April 7, 1999, Ranger paid the lower estimate of its contractor less the deductible and depreciation for a total of $8,773.02.
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> (2) By letter dated April 23, 1999, Winstead advised plaintiffs that cashing the check from Ranger would not prejudice their right to make further claim under the policy, and plaintiffs should therefore send copies of cancelled checks and other information supporting any claim for additional damages. Winstead never received any additional information from plaintiffs.
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> (3) Three months later, plaintiffs' counsel demanded an explanation for Ranger's failure to pay the higher repair estimate and for deducting depreciation.
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> (4) By letter dated August 10, 1999, Winstead referred counsel to his April 23, letter and quoted the policy language allowing depreciation. In the same letter, Ranger invoked the appraisal process of the subject policy, which was available to either party if they disagreed on the amount of loss, and selected David Holman to act as its appraiser. At that time, Winstead advised counsel of Holman's address, requested the name of plaintiffs' appraiser, and asked that plaintiffs' appraiser contact Holman to proceed with the appraisal process.
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> (5) Six weeks later, plaintiffs' counsel sent Winstead a letter alleging he had not received a response to his previous letter and threatening to file suit. Though the earlier letter had not been returned to Winstead as undeliverable, he sent counsel another copy by letter dated October 6, 1999.
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> (6) Six months later, by letter dated April 19, 2000, plaintiffs advised Winstead that they had selected Ray Miller as their appraiser, informed him that Miller had tried unsuccessfully to contact Holman, and asked that Holman call Miller.

> (7) On May 2, 2000, Holman contacted plaintiffs' counsel directly and disputed Miller's representation that he had tried to contact Holman on numerous occasions. He also advised counsel that due to prior contracts, he could not work on this matter for several weeks and requested that he advise Winstead if this were unacceptable. Winstead never received any communication after that time that the delay was unacceptable.
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> (8) On June 7, 2000, Winstead received a fax from Holman advising him that he could not work on the case until July 22, 2000.
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> (9) With that in mind, Winstead began searching for a substitute appraiser but was unable to secure another's services before plaintiffs filed suit in county court in July, 2000.

Therefore, having carefully considered the matter, and "'in light of the plaintiffs' lack of evidence,' there is no reasonable basis for predicting that plaintiffs might establish liability...against the in-state defendants." *Id*. at 393. In this court's mind, nothing about the actions of defendants MIM and Winstead could be interpreted as exhibiting gross negligence, malice, or reckless disregard for plaintiffs' rights as would be required under Mississippi law to establish independent liability on the part of these defendants. At best, this was a pocketbook dispute over the costs of repairs and a failure on plaintiffs' part timely to comply with the appraisal process. MIM and Winstead were therefore fraudulently joined in this proceeding to divest this court of jurisdiction, and their citizenship will be ignored for determining diversity.

That does not, however, end the court's inquiry, as the question of whether the jurisdictional amount is present still remains. The parties agree the appropriate test is whether it appears to a legal certainty that plaintiffs' claims, aggregating their claims for both actual and punitive damages, are really for less than the jurisdictional amount. In that regard, plaintiffs are put in an interesting position. On the one hand, they argued to the state county court that their claims exceeded $75,000.00. On the other, they now argue to this court that they cannot recover sufficient punitive

damages to meet that amount, keeping in mind that the claim for actual damages is only $13,799.30. Ranger is likewise put in an interesting posture. On the one hand, it has argued that the actions of the in-state defendants do not rise to the level of gross negligence, malice, or reckless disregard, which is, of course, the same standard for assessing punitive damages. As discussed above, this argument has been accepted by the court as an accurate reflection of the evidence presented. On the other hand, however, it must now argue that plaintiffs have not met their burden of showing to a legal certainty the failure of their claim for punitive damages.

While the court certainly understands Ranger's desire to remain in this court, the court cannot simply ignore the overwhelming and unrefuted evidence presented which, in this court's mind, shows plaintiffs' insurance claims were not mishandled in any manner sufficient to impose punitive liability. The court therefore must find that it does appear to a legal certainty that plaintiffs cannot recover a sufficient amount of punitive damages to meet the jurisdictional requirements of this court. As the amount in controversy is lacking, the court has no subject matter jurisdiction over this cause, and the motion to remand is granted.

An appropriate order shall issue.

This _____ day of March, 2001.

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SENIOR JUDGE